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FOIP FOLIO

February 2006

BROWN BAG SERIES

Our office will be continuing our 'brown bag' luncheon series into March and April. The workshops are free and open to Freedom of Information and Protection of Privacy Act ("FOIP") and Health Information Protection Act ("HIPA") Coordinators. The place is our office at 503-1801 Hamilton Street, Regina. You are encouraged to bring your 'brown bag' lunch and join us for a discussion of key access and privacy issues. It is necessary to pre-register since our boardroom can only accommodate 12. To register, call Candace Malowany at 787-8350 or 1-877-748-2298. There will be a handout for each workshop. Each session starts at 12:10 p.m. and will conclude by 12:50 p.m. to accommodate tight schedules.

The topics for the next three Brown Bag Workshops will be:

Wednesday, March 8, 2006	How much is too much? Simplifying fees and fee estimates
Wednesday, March 22, 2006	Severing made easy or at least a lot easier!
Wednesday, April 5, 2006	A FOIP Love Triangle! The Public Body, The Applicant and the Third Party (FOIP Part V)

HEY, CHECK OUT OUR WEBSITE – www.oipc.sk.ca

We have brand new statistics on our Office of the Information and Privacy Commissioner ("OIPC") website which was created just two years ago. Since that time, there have been more than 260,000 hits. We continue to welcome your suggestions and advice on how we can make this website more useful for Saskatchewan residents and public sector employees alike.

REINFORCEMENTS COMING!!

The OIPC continues to grow. The Legislature's Board of Internal Economy will allow us to hire another Portfolio Officer this spring. With a third Portfolio Officer, we hopefully can make some progress on our backlog of reviews and investigations. Thank you for your patience in the meantime. We are not yet to the point where we will be able to meet all of the key performance measures in our 2005-2008 Business Plan for the year 2006-2007 although we are getting closer to that goal. That Business Plan can be accessed at our website: www.oipc.sk.ca under Annual Reports.

AVOID BARRIERS TO ACCESS

Both HIPA and FOIP are clear in imposing responsibility for compliance specifically on individual public bodies. Like similar laws in other provinces, the responsibility is vested in each Minister or CEO of a government institution and the CEO of each local authority. It is important that each government institution, local authority and trustee carefully assess how they can respond to privacy complaints and access requests openly, accurately and completely and to do so in a timely way. It is not appropriate to require an applicant/complainant to jump through a series of hoops and hurdles when they attempt to exercise a statutory right of access.

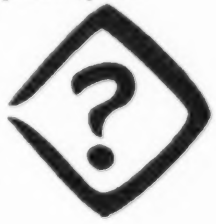
Occasionally, we find that a trustee or government institution or local authority attempts to refer a dissatisfied applicant to a department such as Government Relations, Justice or Health when dealing with a request for access or a privacy complaint. In such cases, we remind the public body that they cannot legally shift their responsibility to some other department, even those departments that are providing support in terms of training and tools. Each government institution, local authority and trustee should clearly indicate to their clients that if someone is dissatisfied with a decision of the public body, they have the right to appeal to the OIPC. Contact information for the OIPC should be included in that notice, whether on a website or in printed material.

ACCESSING GOVERNMENT INFORMATION: GENERAL TIPS

A useful new tool is now available to Saskatchewan residents who are looking for information about their access rights. Philippa Lawson, Executive Director of the Canadian Internet Policy and Public Interest Centre and a team of students have produced a Manual easily downloadable from the website: http://idtrail.org/content/section/9/88. This includes sections on *General Tips, Accessing Government Information in Saskatchewan, Accessing Your Personal Information in Saskatchewan* and *Appealing Access to Information Decisions in Saskatchewan.*

WHAT ARE THE RULES FOR PERSONAL INFORMATION OF EMPLOYEES?

The OIPC gets a number of calls from employees in Saskatchewan with questions or concerns about what is happening to their personal information in the workplace. To provide more information in this area, we have added to our website a paper prepared by the OIPC for the Canadian Bar Association Mid-Winter Meeting in early February, 2006-*Privacy Laws and Virtue Testing in the Workplace.* This can be accessed at www.oipc.sk.ca under the tab "Presentations". It may be helpful to refer to the chart on page 3 to find out which law will apply to an employee in different kinds of organizations. Employees of public sector organizations are covered under FOIP or LA FOIP. Most private sector employees in Saskatchewan will have no privacy law protection.



JUSTICE GOMERY'S SECOND REPORT

You will recall that Justice Gomery's first report focused on who did what to whom. His second report released on February 1, 2006 is appropriately titled, *Restoring Accountability*. We urge all Saskatchewan FOIP and HIPA Coordinators to read ***Chapter 10- Transparency and Better Management***. This captures the recommendations for amendment of the 22 year old Access to Information Act ("ATIA") and the practices and policies for compliance. This is actually very relevant to our province since in many respects, our 13 year old FOIP Act is modelled on the ATIA. In fact, the key recommendations of Justice Gomery nicely complement the plan proposed by the OIPC in our Annual Report 2005-2006 – **Privacy and Access: A Saskatchewan Roadmap for Action.** Early on in the chapter Justice Gomery observes " *...a key concept that may be learned from the private sector: greater transparency promotes accountability and better management*". He adds that, "*improved transparency and accountability will, ultimately, elevate the effectiveness and efficiency of management throughout the Government*". That would, in the view of the OIPC, equally apply to Saskatchewan government institutions.

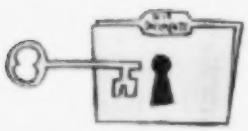
Justice Gomery noted that the obligation and responsibility of government to keep records and to create a "paper trail" should be more than a matter of policy - it should be an explicit part of the law of Canada. The Saskatchewan OIPC has observed cases where some government workers have admitted they deliberately did not document certain discussions and decisions to avoid FOIP access requests. We support the Gomery recommendation that it should be an offence to fail to document decisions and recommendations or to destroy documentation about those decisions or advice and deliberations behind those decisions.

Other Gomery recommendations which would be useful to implement in this province include:

- ATIA should explicitly require government institutions to make reasonable efforts to assist information seekers and to respond openly, accurately and completely without unreasonable delay [this is explicit in HIPA and we have found such a duty implicit in FOIP and LA FOIP Acts - Report 2004-003 [5] to [15] and Report 2004-005 [19]];
- Each head of a government institution and access to information coordinator must ensure the rights and obligations in the ATIA are respected and discharged by that institution;
- An 'injury test' should be required before records could be withheld from an access request;
- There should be a public register of all documents disclosed under the ATIA;

The full report can be accessed through Public Works and Government Services Canada (1-800-635-7943).

PUBLIC SECTOR OUTSOURCING AND RISKS TO PRIVACY



Alberta Information and Privacy Commissioner Frank Work has published a report that focuses on the risks when public bodies in that province collect, use and disclose personal information. This can be accessed at www.oipc.ab.ca.

In addition, the Alberta government has signalled that, in the spring sitting of its Legislative Assembly, it will introduce amendments to its *Freedom of Information and Protection of Privacy Act* to better protect against such threats as the USA Patriot Act and other outsourcing risks. The British Columbia government made amendments to its FOIP Act for the same purpose more than one year ago.

As noted in our Annual Report 2004-2005, our Saskatchewan FOIP Act is deficient in not imposing any duty on public bodies to protect personal information in their possession or under their control. There is therefore no offence to fail to protect personal information in the control of a public body. If however an improper disclosure to someone results from the failure to protect, there is a violation of the Act. There is no substantial penalty to underscore the importance of this responsibility. Fines under more recent privacy laws are very substantial ($500,000 in HIPA, $100,000 in PIPEDA, B.C.) The maximum fine under our Saskatchewan FOIP Act is $1,000.

The Saskatchewan government has suggested some changes to its outsourcing contracts but is apparently not planning to address these risks through legislative change.

POSSESSION AND CONTROL-WHAT DOES IT MEAN?

Since we have published the brochure called ***A Contractor's Guide to Access and Privacy in Saskatchewan*** we understand that some have wanted clarification as to what the words "*in the possession or under the control of a* [government institution or local authority]" mean. [Section 5 FOIP and LA FOIP] Our view is that the words "*in the possession*" mean in the physical custody of a public body. The words "*under the control of*" refer to a case where the records are not in the physical custody or possession of a public body. To be under the control of a public body, records might be those that typically would be removed by an employee from the public body's premises for some reason or records that a third party contractor has received or created at the direction of a public body. In the latter case, the contract will typically provide that the contractor cannot disclose the information to anyone else, must return all of the records to the public body at the conclusion of the contract, and must permit the public body to audit anything done with those records. In the privacy world, when records are provided to a contractor and yet remain under the control of a public body this constitutes a "use" and not a "disclosure". In other words, there is no disclosure if the public body retains control over the records.

RESPECTING A WOMAN'S RIGHT TO CHOOSE

Back in April 27, 2005, we released our investigation report dealing with the Prevention Program for Cervical Cancer (PPCC) operated by the Saskatchewan Cancer Agency (SCA). In this Report, the Commissioner recommended that the SCA go beyond the statutory requirements of *The Health Information Protection Act* to ensure that Saskatchewan women have the right to a full opt-out of the PPCC if she so desires.

Since then, we are pleased to report that the SCA has updated its website materials on http://www.scf.sk.ca/ which provide that women now have the option to opt-out of the program. If you click on the *Prevention Program for Cervical Cancer* tab, you will find two new pamphlets: *Protection Your Privacy – What We Do*; and *Opt-Out – What Does It Mean?* Both pamphlets provide information on how to choose not to be part of the PPCC.

We commend the SCA for following through with their commitment to offer a meaningful opt-out for Saskatchewan women.

Similarly, Alberta Commissioner Frank Work's office has recently concluded its investigation into their equivalent of the PPCC, the Alberta Cervical Cancer Screening Program (ACCSP). In that province, women were also concerned with the sharing of their personal health information with the Alberta Cancer Board (ACB) and of their inability to opt-out of that program. In a news release dated February 9, 2006, Commissioner Work's office announced that, as in Saskatchewan, the ACB did have authority to collect, use, and disclose women's health information without consent to the ACCSP. During the course of the investigation, the ACB decided to create a full opt-out of the ACCSP. The Commissioner's report therefore offers no recommendations for change.
A copy of the Alberta OIPC Report is available at
http://www.oipc.ab.ca/ims/client/upload/H2005_IR_002.pdf.

FUTURE EVENTS

March 8, 2006 -- Information Protection & Destruction: Risk Management and Compliance Fundamentals, NAID Canada, Toronto (call 416 203-3701 for details)

March 8, 2006 -- OIPC Brown Bag Luncheon Workshop (12:10 p.m. – 12:50 p.m.), "How much is too much? Simplifying Fees and Fee estimates", 503-1801 Hamilton Street, Regina (call (306) 787-8350 for details or to register)

March 20-21, 2006 -- Information Management in the Public Sector, Ottawa, ON, (call 1-800-363-0722 for details)

March 22-23, 2006 -- Electronic Documents and Records Management, Ottawa, ON, (call 1-800-363-0722 for details)

FUTURE EVENTS continued

March 22, 2006 -- OIPC Brown Bag Luncheon Workshop (12:10 p.m. – 12:50 p.m.), "Severing made easy or at least a lot easier!", 503-1801 Hamilton Street, Regina (call (306) 787-8350 for details or to register)

April 3-4, 2006 -- Privacy and Security in Government Information, Ottawa, ON, (call 1-800-363-0722 for details)

April 5, 2006 -- OIPC Brown Bag Luncheon Workshop (12:10 p.m. – 12:50 p.m.), "A FOIP Love Triangle! The Public Body, The Applicant and the Third Party (FOIP Part V)", 503-1801 Hamilton Street, Regina (call (306) 787-8350 for details or to register)

April 11, 2006 -- Workplace Privacy 2006 Conference, Lancaster House, Toronto, (for registration information please visit http://www.lancasterhouse.com/conferences/Toronto/WPP/wpp06_index.asp)

April 26-27, 2006 -- Personal Information Protection Act Conference 2006, Calgary, AB (visit http://verney.ca/pipa2006/ for details)

May 4-6, 2006 -- Access and Privacy, Winnipeg, MB (To view the conference agenda and register, please visit http://www.gov.mb.ca/chc/privacy/index.html)

May 6, 2006 -- The Media and the Law Seminar 2006: Dirty Secrets, Edmonton, AB, (visit http://www.lawsocietyalberta.com/files/MediaLawSeminar2006Flyer.pdf for details)

May 11-12, 2006 -- Privacy Compliance – Meeting Your Obligations and Challenges by Canadian Institute – Toronto (visit http://www.canadianinstitute.com/Conference_Search.htm for details)

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